

2011 WL 7625710 (Miss.) (Appellate Brief)
Supreme Court of Mississippi.

Thomas Sheldon VINCENT, Appellant,

v.

Clinton CREEL and Beverly Stockstill, Co-Conservators for their Adult Daughter, Shannon Celeste Creel,
now Substituted as Beverly Stockstill for and on Behalf of the Estate of Shannon Celeste Creel, Appellee.

No. 2010-CA-01198.

May 11, 2011.

Appeal from the Chancery Court of Pearl River County, Mississippi
Oral Argument not Requested

Appellee's Brief

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*1 STATEMENT OF ISSUES

1. Whether the Chancellor erred in the application of Mississippi Law and the determination of facts by clear and convincing evidence that a constructive **trust** was created for and on behalf of Shannon Celeste Creel, to set aside the quitclaim deeds executed by Shannon, for and on behalf of Thomas Sheldon Vincent, as a result of undue influence and fraud.
2. Whether the Chancellor erred in the application of Mississippi law and the determination, on the ruling against the Motion for New Trial, on the basis of the Order Denying Motion for Reconsider/New Trial, with the Appellant stating no factual basis to challenge the legality or ruling of the Chancellor's final judgment pursuant to [Rule 59\(e\)](#) of the Uniform Mississippi Rules of Civil Procedure.

*2 STATEMENT OF THE CASE

A. NATURE OF THE CASE

Shannon Celeste Creel lived a vibrant and exciting life, working at the NASA Test Facility for a number of years as an inspector. Unfortunately, due to the devastating consequences of the ravaging effects of diabetes, she was forced to abandon her career when the disease consumed her vision in 1997. (Ex 6 p. 6, 7)

During the course of her employment tenure, Shannon was able to purchase two homes in the Pearl River County community. Twenty-five years prior to the litigation involved in this real estate transaction, Shannon had purchased the home in question (referred to as Henley Field or Smith Road, Ex 6 p. 8) for approximately Sixty Thousand Dollars (\$60,000.00) solely in her name. (Ex 6 p. 23) No one else resided on the premises nor contributed to the payment of any notes until Shannon attempted to sell the property.

While employed at NASA, Shannon became friends with a fellow employee by the name of Thomas Sheldon Vincent, and had approximately a nine year relationship with him, including an occasional overnight liaison. (Ex 6 p. 23) Shannon was forced to resign from the workplace in 1997, when the devastating effects of [Diabetes](#) over took her ability to work, and she began to substantially deteriorate and fight the ravaging effects of [Diabetes](#).

As Shannon's health started to decline, it became necessary for her to liquidate her assets so that she would have the means and ability to seek medical treatment including, but not limited to possible medical transplant, and have access to her funds during her dying days. (Ex 6 p. 31) Shannon was forced to move into her mother's home during the Summer of 2004, when she was unable to adequately care for herself on a daily basis. Her Mother, Beverly Stockstill, assumed responsibility for her financial affairs and other day to day assistance.

*3 Shannon attempted to sell the property that is the subject to this litigation, prior to the summer of 2004, by owner financing. This was the first in a series of disastrous consequences with the subject property, as the intended buyer was unable to make the notes and left the home in disarray. After spending Twelve Thousand Dollars (\$12,000.00) of her own personal funds to repair the property left by the purported buyer, she was Twelve Thousand Dollars poorer, and the property was not repaired as a result of contractor fraud. As her health began to rapidly deteriorate in the fall of 2004, Shannon became even more concerned with the ability to have sufficient monetary access to care for her medical treatment. Shannon was unable to adequately care for herself, drive, or manage her day to day affairs. Shannon executed three deeds in rapid succession during the Fall of 2004, as follows, to-wit:

1. The quitclaim deed from Shannon to her Mother on September 1, 2004;
2. The quitclaim deed from Shannon's Mother to Shannon and Thomas Sheldon Vincent on October 18, 2004; and,
3. The quitclaim deed from Shannon solely to Thomas Sheldon Vincent on November 8, 2004.

The first deed on September 1, 2004, was executed to her Mother in an effort to prevent the property from being seized from creditors and so that she would have the financial ability to pay for any medical expenses that may be forthcoming. When Thomas Vincent became aware that Shannon was the victim of contractor fraud on her property, he approached her about repairing the property in return for the free rent. Shannon convinced her Mother, at Thomas' request, to convey the property as joint tenants of rights of survivorship, in return so that Thomas would have some sort of security interest for his "work" with the understanding that he would return the property to her. (Ex 6 p. 10, 14, 19, 20, 30, 31) Beverly conveyed the interest on *4 October 18, 2004, as the second deed with the understanding that Thomas would return the property to Shannon at her request.

Despite these assurances, Thomas continued to concoct a scheme for Shannon to convey the property solely to him, between the 18th of October and the 8th of November, 2004. During this time frame, Shannon was extremely ill as a result of [renal failure](#) and dialysis, and suffered from extremely poor vision.

Thomas Vincent had a third party prepare a deed conveying the property solely to him, and secretly picked up Shannon to have her execute the deed on November 8, 2004. (Ex 6 p. 32) The record is void of any consideration for this transaction, except for the consideration expressed by Vincent indicating that it was for ten dollars (T -14, T - 55); for his time and nine years of a relationship (T -11); and/or his love and affection (T - 31); or as in his answers to Interrogatories - "??"; and/or his toleration of Shannon (T - 25); and finally as in his words "take it how you want it" (T - 34 L 5), which clearly manifests his original intentions: In the discovery responses, Thomas Vincent indicated when asked what consideration was given for the quitclaim deed of November 8, 2004, and his response was "??". At trial, Thomas indicated that it was his "love and affection" and ten dollars. Shannon testified that she conveyed it to him to protect the property and as a security interest for Thomas to repair the property with the understanding that it would be conveyed to her on her demand. (Ex 6 p. 16, 17, 18, 19, 20) She specifically stated in her testimony that it was never her intention to grant Thomas ownership in the property. The Trial Court noted and it

was in Shannon's testimony, that this was secretly done and Shannon's parents did not become aware of this until approximately two years later, when Shannon demanded that the property be returned to her.

*5 When demand was made to return the property, Thomas refused and stated that the property was his and he told her “I told her I wasn't going to do it...it wasn't her call at that point in time...because it was my place”. (T - 24) Thomas exposed his greed, avarice, and larcenous intent to the world by telling Shannon and her parents, that the title to the property was his and that he intended to keep the windfall.

To add insult to injury, after Shannon had conveyed so much **trust** in this purported friend, and confronted her confidant and purported friend with the fact that it was like “robbery because it belonged to me” the ultimate truth spews the venom of his evil plan by responding “I don't care”. (Ex 6 p. 28)

B. STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

Shannon Celeste Creel was employed at the NASA test site for a number of years and as a result of Diabetes, was forced to leave the workplace in 1997. (Ex 6 p. 6,7)

Shannon acquired two homes during the tenure that she worked, had liquidated one home, and attempted to sell the parcel in question on a prior occasion. Unfortunately, she attempted to sell it to a buyer who was unable to afford to pay the notes and she had to repossess the property. (Ex 6 p. 9) She subsequently became the victim of contractor fraud in an attempt to repair the property to make it inhabitable in the amount of Twelve Thousand Dollars (\$12,000.00)

In the Summer of 2004, she became dependant upon her Mother, Beverly Stockstill, for her day to day living and assisting her with her financial obligations, and helping her with her medical condition since she had succumbed not only to the loss of vision, but was having to have **kidney dialysis** as a result of **renal failure**. (T - 61, 62) After being stung twice, trying to sell or
*6 rehabilitate the property, Shannon became more concerned about liquidating this property in order to pay for her medical expenses and future treatment. (T - 64)

In the Fall of 2004, Shannon became extremely concerned with protecting her assets and attempting to have sufficient financial resources available for her medical treatment both presently and in the future. Shannon granted her Mother her power of attorney to care for her and handle all financial abilities. During this time, Shannon was involved in three deeds concerning the property that is the subject of this litigation, and they were as follows, to-wit:

1. The quitclaim deed from Shannon to her Mother, Beverly Stockstill, on September 1, 2004;
2. The quitclaim deed from Shannon's Mother, Beverly Stockstill, to Shannon and Thomas Sheldon Vincent on October 18,2004; and,
3. The quitclaim deed from Shannon solely to Thomas Sheldon Vincent on November 8,2004.

The first deed was given to her Mother in an attempt to protect her assets from creditors and to provide a means for her to have financial resources for her medical treatments. (Ex 6p. 31)

The second deed was conveyed from Shannon's Mother (despite her objections) to Shannon and Thomas on October 18,2004, with the understanding that it would be reconveyed to Shannon at her request. (T - 76) This deed was granted as a purported security interest for Thomas Vincent to repair the property and utilize it rent free. (T - 77) Vincent needed a place to live because of the Spartan conditions of his home in Hancock County without electricity. (T-75)

*7 Thomas Vincent surreptitiously prepared a deed and secretly absconded with Shannon to have her execute a quitclaim deed solely from Shannon to Thomas on November 8, 2004. (T -13,14,15) This deed was not known to Shannon's parents or her Mother as power of attorney until approximately two years later. (T - 82) Shannon's health continued to deteriorate and as a result, on November 8, 2006, a Petition for Letters of Conservatorship were filed and an Order was entered on the same date. After Shannon had made the demand for Thomas Vincent to return the property to her, he refused and the conservatorship immediately filed a Complaint seeking Invalidation of Fraudulent Quitclaim Deed and Other Relief on February 12, 2008. The Amended Complaint, which is subject to this litigation, was filed on August 27, 2008.

After the death of Shannon Celeste Creel, Beverly Stockstill Creel was amended to represent the Estate of Shannon Creel, on April 24, 2009. After a trial on the merits, the Court entered a Findings of Fact, Conclusions of Law and Final Judgment invalidating the deed and reverting the property in question to the Estate of Shannon Creel, based on undue influence and fraud. A generic Motion for New Trial, Reconsider [sic] was filed on April 5, 2010 alleging no basis under [Mississippi Rule 59\(e\)](#) to establish what basis Chancellor erred. The Court entered a final judgment on April 9, 2010 with the Findings of Facts, Conclusion of Law and Final Judgment, and subsequently considered the Motion for New Trial, Reconsider [sic], on June 30, 2010, and denied the same.

Due to the increasing demands of her illness, and her inability to see or drive, Shannon appointed her father and mother as co-conservators of her estate, at the age of 48 years old. Shannon joined in the petition for appointment of conservatorship, based on the documentation that was submitted from her treating physician, Dr. Randall Smith on September 8, 2006, as well *8 as various other physicians reports submitted. The Court granted her request to appoint her parents as conservators for and on her behalf.

The Amended Complaint seeking validation and or fraudulent quitclaim deed and/or other relief was filed on behalf of the conservatorship on February 12, 2008, attempting to revoke the deed that was prepared solely to Thomas Vincent, dated November 8, 2004.

On the first of September, 2004, Shannon Creel appointed her mother, Beverly Stockstill, General Durable Power of Attorney to act on her behalf.

A Motion for Authority to Maintain the Lawsuit was filed on June 5, 2008, with a certificate attached with three physicians concurring it was appropriate for the co-conservators to move forward on this matter dated June 5, 2008, and it's in the record on page 47-53.

Authority was given by the Court to file an Amended Complaint Seeking Invalidation of the Fraudulent Quitclaim Deed and Other Relief, in Cause No. 06-0486, and the Complaint was filed pursuant to Order on August 29, 2008 (page 166). The complaint asserted that Shannon Creel was a vulnerable adult resident of Pearl River County, and that as a result of her work, she became acquainted with Thomas Vincent. After she had been defrauded of Twelve Thousand Dollars (\$12,000.00), in the described property of this lawsuit, Thomas Vincent approached her and offered to repair the property during the summer of 2004, in return for a concocted scheme that he would repair her property in return for use and occupancy of the property "rent free."

Thomas Vincent would surreptitiously contact Shannon Creel, who resided with her parents, and try to secret the conversations with her, and used his position of **trust**, friendship and confidant, knowing that she was severely disabled, and that the dialysis had affected her eyesight and physical condition, and also the ability to concentrate. (T - 7, 8, 16, 32) Not only did he attempt to get the deed which had been conveyed to Shannon's mother, back into Shannon and *9 his name, and was successful in doing so, he was not satisfied and had someone prepare a deed solely from Shannon to him, and surreptitiously recorded the same, knowing that Shannon **trusted** him to return the property back to her upon request.

When demand was made by Shannon Creel to have the property returned to her, Thomas Vincent replied "Too bad, it was his property" and that he refused to return the property to her.

The lawsuit that was filed is based on fraud, material misrepresentation, unjust enrichment, breach of duty of good faith and fair dealing of contractual matters, constructive **trust** and abuse of a venerable adult, among other kinds of relief.

*10 SUMMARY OF THE ARGUMENT

. After considering the testimony of all the witnesses in open Court, the Chancellor made, by clear and convincing evidence, that Thomas Vincent had a confidential relationship with Shannon Creel, and as a result of that relationship, he concocted a scheme to defraud Shannon of certain real property, commonly referred to as the Henley Field property.

When the Chancellor determined that Thomas Vincent, the Appellant, had a confidential relationship, and that Shannon suffered by physical impairment, partial blindness and a physical inability to care for herself, the Appellant failed to rebut any showing of undue influence.

The Court therefore ruled, that the title to the real property he gained by virtue of his undue influence, was void and set aside, and was illegally a construct of **trust** for and on behalf of the Estate of Shannon Creel.

After the trial of this matter, the Appellant filed a Motion for New Trial, Reconsider [sic] [sic], with no legal or factual basis to upset the Chancellor's decision.

Since the Chancellor is the ultimate fact finder at trial level, and the Appellant failed to produce any evidence to rebut the inference of undue influence; nor provided the Chancellor with any basis pursuant to [Mississippi Rule of Civil Procedure 59\(e\)](#) to set aside the verdict, the Mississippi Supreme Court should affirm the decision, since there is no showing of abusive discretion.

As a result, the real property title, commonly referred to as Henley Field, should remain with the Estate of Shannon Creel, and that Thomas Vincent's deed should be void.

*11 ARGUMENT

I. STANDARD OF REVIEW

In reviewing the Chancellor's Findings of Facts, Conclusion of Law and Final Judgment, the Appellant Court should affirm, if the facts are supported by substantial credible evidence in the record. [Mullins v. Ratcliff](#), 515 So.2d 1183 (Miss. 1987).

The Court has repeatedly stated that the Chancellors decision will not be disturbed if it supported by substantial and credible evidence in the record. [Anderson v. Burt](#), 507 So.2d 32, 36 (Miss.1987); [Norris v. Norris](#), 498 So.2d 809, 814 (Miss. 1986); [Gilchrist Machinery Co., Inc. V. Ross](#), 493 So.2d 1288, 1292 (Miss. 1986); [Cotton v. McConnell](#), 435 So.2d 683, 685 (Miss. 1983); [Culbreath v. Johnson](#), 427 So.2d 705, 707-09 (Miss. 1983); [Richardson v. Riley](#), 355 So.2d 667,668 (Miss.1978); [Spain v. Holland](#), 483 So.2d 318, 320 (Miss. 1986); [Carr v. Carr](#), 480 So.2d 1120, 1122 (Miss. 1985); and, [Cheek v. Ricker](#), 437 So.2d 1139, 1143 (Miss. 1983).

A Chancellor as the fact finder, will not be reversed, unless the Chancellor is manifestly wrong based on substantial evidence. [Mullins v. Ratcliff](#), 515 So.2d 1183, at 1189 (Miss.1987); [Brown v. Williams, et al.](#), 504 So.2d 1188, 1192 (Miss. 1987).

The Appellant Court has a burden to examine the trial Court record and accept the evidence which may support the findings of facts made by the Chancellor in addition to the any reasonable inferences that favor the lower Court's conclusions. [Mullins v. Ratcliff](#), 515 So.2d 1183 (Miss.1987); [Cotton v. McConnell](#), 435 So.2d 683, 685 (Miss. 1983).

The well known precept of law, is that the Chancellor as the fact finder, determines exclusively, the credibility of the witnesses and testimony that is presented. *Hall v. State ex rel. Waller*, 247 Miss. 896, 903, 157 So.2d 781, 784 (1963).

***12 II. THE CHANCELLOR CORRECTLY DETERMINED THAT THE DEED FROM SHANNON CREEL TO THOMAS VINCENT SHOULD BE SET ASIDE DUE TO UNDUE INFLUENCE AND FRAUD AND REVERTED BACK TO THE ESTATE OF SHANNON CREEL**

The crux of the Court's decision in the Findings of Facts, Conclusions of Law, and Final Judgment were based upon the Court finding clear and convincing evidence that there was undue influence by Thomas Sheldon Vincent in having the property conveyed solely to him.

The Trial Court correctly established a criteria to be set under *Croft v. Adler*, 237 Miss. 713, 115 So.2d 683 (Miss. 1959), that the proponent that the party challenging or trying to establish undue influence, and determine that the deed is invalid by undue influence has to establish (1) that the beneficiary was in a confidential, fiduciary relationship with the testator at the time of execution; and (2) that the plaintiff has to establish undue influence by clear and convincing evidence as a result of the confidential relationship or in essence need no testamentary capacity. *Id* at 684.

The Mississippi Supreme Court has ruled on a number of occasions, that the confidential relationship could be a moral, domestic or personal relationship and does not necessarily have to be any type of legal relationship. *Murray v. Laird*, 446 So.2d 575 (Miss. 1984) at 578; *Hendricks v. James*, 421 So.2d 1031 (Miss. 1982); *Bourn v. Bourn*, 163 Miss., 140 So.2d 518 (Miss. 1932).

The Trial Court correctly concluded based upon the evidence, that Thomas Vincent was in a position of dominant influence arising either from weakness of mind or body, and through **trust**, which could result in a fiduciary relationship. *Madden v. Rhodes*, 626 So.2d 608 (Miss. 1993) at 617.

Thomas Vincent knew that there were vision problems with Shannon, since she had to resign her position at NASA. When confronted during the course of the trial that he knew about *13 the vision problems and being legally blind, he comes up with an evasive answer "I take it she could see" (T - 7), and the rhetorical question, "what's legally blind". (T - 8) At the time that this scheme was evolving in 2004, he had actual knowledge that Shannon was on dialysis (T - 7); was swelling-(T - 32); dependant on her mother for her physical needs (T - 32); and was dreaming of a transplant in order to perpetuate her life. (T - 16) Despite all this, he utilized his relationship with Shannon in order to get her land and home.

Undue influence can occur when a person has advanced age, weakness of mind and/or sickness, or lacking of mental ability to understand and appreciate the nature and effect of the conveyance. *Holmes v. O'Bryant*, 741 So.2d 366 (Miss. App, 1999).

Despite the knowledge that he had of Shannon's debilitating condition, Vincent tried to infer that this transaction was based on love and affection, and that the two were all but married. (T - 6)

The Trial Court correctly weighed the evidence and determined that a confidential relationship existed based upon the criteria established in *Wright v. Roberts*, 797 So.2d 992,998 (Miss. 2000); *In re Estate of Dabney*, 740 So.2d 915, 921 (Miss. 1999); and, *Murray v. Laird*, 446 So.2d 575 (Miss. 1984).

The Court concluded based upon clear and convincing evidence, that:

1. *Requirement of Care*: Shannon was forced to leave the work force in 1997 because her vision had become so impaired. She was unable to drive herself, and was forced to move into her Mother's residence so that her Mother would be able to care for her as her condition continued to deteriorate. At the time the deed was executed, Shannon had lost a substantial amount of her eyesight and was on **dialysis for kidney** failure.

2. *Close Relationship*: Thomas and Shannon maintained a very close relationship for nine (9) years. Although Shannon stated in her deposition that the two were never romantically involved, she admitted that their relationship did result in at least a few overnight stays at one of Shannon's residences. Sometimes these *14 overnight stays would last up to three (3) days.

3. *Providing Transportation and Medical Care*: Shannon had not been able to drive herself since 1997. She relied on others to drive her to places, including medical appointments. She was also very vulnerable and afraid of creditors, to the point that she began deeding her property to her mother for fear that she would be unable to pay her rising medical bills. In fact, Thomas had picked her up and driven her to the undisclosed location where Shannon signed the deed conveying the property to him.

4. *Maintaining Joint Accounts*: Thomas and Shannon never co-habitated, nor did they ever share any joint accounts.

5. *Physical or Mental Weakness*: Shannon was sick with kidney failure, nearly blind, unable to drive, and on dialysis at the time the deed to Thomas was signed. To compound matters, Shannon had also recently been scammed by falling victim to contractor fraud, which resulted in a financial loss to her of approximately \$10,000.00. She was desperate at the time of the execution, and had trusted Thomas completely.

6. *Advanced Age or Poor Health*: Again, Shannon had been extremely sick with diabetes, and her condition had continued to deteriorate. As stated above, she was suffering from kidney failure and blindness, among other debilitating ailments resulting from severe diabetes.

7. *Power of Attorney*: Shannon granted her Mother Power of Attorney over her affairs in the summer of 2004 because she felt she was no longer able to handle her day to day affairs.

Based on clear and convincing evidence, the Courts Findings of Facts and determination should be honored by the Court, unless overcome by substantial and credible evidence. The Court specifically concluded that Thomas Vincent was actively involved in the preparation of the deed and surreptitiously and secretly carried Shannon to execute the deed, knowing that she had some mental and physical infirmities at the time as a result of her diabetes. As a result of his confidential relationship with Shannon, he obtained a substantial windfall benefit. *Wright v. Roberts*, 797 So.2d 992, 998 (Miss. 2000).

*15 The Court specifically cited in it's Findings of Fact from the *Estate of McRae*, 522 So.2d 731,737 (Miss. 1988):

“When there is a fiduciary or confidential relation, and there is a gift or conveyance of dubious consideration from the subservient to the dominant party, it is presumed void. This is not because it is certain the transaction was unfair; to the contrary, it is because the Court cannot be certain it was fair.”

The Court also looked at the blatant greed and avarice of Thomas Sheldon Vincent, and determined that he did not exercise good faith in the preparation and activities involving this deed.

Relying on the factors of *Murray*, the Court concluded that Thomas was active in the preparation and concocted a scheme to obtain the deed as a security instrument for his work. The Court correctly concluded that Thomas secreted Shannon from the sanctuary of her Mother's care, and conveyed her to an undisclosed location for the execution of the deed, without any consideration.

There is absolutely no dispute that Thomas Vincent had a third party prepare the last two deeds in order for Shannon to sign. (T -13) Thomas Vincent had absolute knowledge that Beverly Creel did not trust him with his purported security interest theory, and refused to convey the property solely to him. (T - 32,33) Nevertheless, Vincent had another deed prepared and swept Shannon away from the sanctuary and protection of her care givers, in order for her to execute a deed solely to him. (T - 13, 14, 15)

The Court also reviewed the adequacy of the consideration, and found that Thomas Vincent concocted the successful plot of greed in a larcenous form with absolutely no consideration as he admitted in discovery by utilizing the symbol “?”, and then converting his *16 answer to one of “love and affection and the sum of ten dollars” paid for property valued well in excess of Sixty Thousand Dollars (\$60,000.00).

The Court had the benefit of Vincent's explanation of consideration that swept a broad brush of deliberate deceit of his original intentions. Vincent argued that he had earned or that it was adequate consideration for the property due to his relationship with Shannon, as “all but being married.” (T -6) His “married” relationship consisted of an occasional visit to his home, and no subsequent caring or support for her after the deed was executed. At no time did they ever share a joint checking account or commingle any of their assets. (T -9) After she had demanded that the property be returned, he had no other communication with her. (T - 28) How is this love and affection? Was it nine years of a relationship and his valuable time? (T -11) Was ten dollars good and adequate consideration? (T - 14, 55) His toleration of Shannon purportedly has some value to him and was worthy of consideration. (T - 25) And the love and affection that he had for Shannon, which manifested by never visiting her (T - 17); only one call (T - 17); no get well cards (T - 18); no visiting her in the nursing home (T - 18); placing her off limits by his rules (T -18); and an ultimate show of love and affection by not attending her funeral. (T - 18)

The Court correctly concluded that his love and affection for Shannon was superfluous at best when he had not visited her in several years after she conveyed the property solely to him.

In the Findings of Fact, the Court cited *Bethea v. Mullins*, 226 Miss 795, 885 So.2d 452, 456 (1956), citing 16 Am. Jur., Deeds, Section 33, stated:

“If the inadequacy of consideration is so glaring as to [sic] stamp the transaction with fraud and to shock the common sense of honesty, a court of equity will intervene.”

*17 The Court correctly concluded that there was undue influence and that Thomas Sheldon Vincent had concocted this fraudulent scheme and that the deed should be set aside and held for naught.

The Trial Court is on a heightened alert to protect those who are unable to protect themselves, and the Courts have examined these types of transactions by subservient individual to one in a confidential relationship under a microscope. The Court is a guardian of the rights of those who are least able to protect themselves, not assuming that the transaction may be unfair, but to determine that the transaction was legitimately fair and a good faith dealing.

The Court has correctly concluded in *Meek v. Perry*, 36 Miss. 190 at 246 (1858) :

“If the Court does not watch these transactions with a jealousy almost invincible, in a great majority of cases, it will lend it's assistance to fraud.”

Once the Court found that a confidential relationship existed, the burden shifted to Thomas Vincent to prove with clear and convincing evidence, to rebut the assumption of undue influence and affirm the transaction by clear and convincing evidence.

As stated above, there was no real evidence produced by Thomas Vincent to indicate that there was any rebuttable evidence to contradict his undue influence by virtue of this relationship.

After the Court determined that undue influence existed, and that both of the instruments ie: the deeds, were the products of undue influence (T - 16), it concluded and went on to establish that a constructive **trust** existed. The Court correctly cited *Lipe v. Souther*, 80 So.2d 35 (Miss. 1955), indicating, that “it is a relationship plus the abusive confidence imposed that authorizes a court of equity to construct a **trust** for the benefit of the party who's confidence has been abused.” The Court specifically found

substantial overreaching of fraud and sufficient proof which was *18 clear and convincing. *Pitchford v. Howard*, 45 So.2d 142, 147 (Miss. 1950), and *Shumpert v. Tanner*, 332 So.2d 411, 412 (Miss. 1976).

The Trial Court, as a finder of fact, and with the compelling virtual dying declaration of Shannon Celeste Creel found by clear and convincing evidence that a constructive trust existed “by an extraordinary degree of certainty and clarity.” *In re Estate of Horrigan*, 757 So.2d 165 (Miss. 1999), see also *Summer v. Summer*, 224 Miss. 273,274 (1955); see also *Stovall v. Stovall*, 218 Miss. 364 (1953).

As a result, once a constructive trust exists, the Court can compel to rescind the improper transaction and restore the innocent party to its rightful position, and as a Court cited to whom it justly belongs.

After the Chancellor found that there was undue influence, as correctly noted, the burden shifted to Thomas Vincent to establish by clear and convincing evidence, to over come the presumption of undue influence and showing of good faith on the part of the grantee, with the grantor's full knowledge and deliberation of his actions and consequences, as well as the grantor's independent consent and action. *Murray v. Laird*, 446 So.2d 575, 578 (Miss. 1984).

The Chancellor examined the good faith intent of Vincent, he can only look at his responses concerning the relationship and Shannon's property after her demise in 2009. Acknowledging that Shannon had personal property stored on the premises (T -10), Vincent boldly proclaimed “It's mine...I've got it” (T - 11) His rights to her personal property were stated “I'm going to take claims [sic] of it. Sure am...yes, I am. It's been abandoned. How about that? (emphasis added) That's the way I feel about it” (T - 11)

The evidence is overwhelming in support of the Chancellor's findings, based upon the evidence introduced in this record, and applying the applicable law.

***19 III. THE CHANCELLOR CORRECTLY DETERMINED THE RULING AGAINST THE MOTION FOR NEW TRIAL, RECONSIDER [sic] ON THE BASIS OF THE ORDER DENYING MOTION FOR NEW TRIAL, RECONSIDER [sic], WITH THE APPELLANT STATING NO FACTUAL OR LEGAL BASIS TO CHALLENGE THE LEGALITY OR RULING OF THE CHANCELLOR'S FINAL JUDGMENT PURSUANT TO RULE 59(E) OF THE UNIFORM MISSISSIPPI RULES OF CIVIL PROCEDURE.**

The Defendant has tried to assert, that the Court improperly ignored the generic Motion for New Trial, Reconsider [sic]. The appellant has made generic and naked assertions that there was a basis for new trial, without proper consideration, with no case law or factual basis. When there is a bench trial, and a Motion for Reconsideration is filed, it is construed as a Motion to Alter or Amend the Judgment under MRCP Rule 59(e). *Street v. Street*, 936 So.2d 1002 (Miss. 2006)

In order for the Appellant to succeed on such a Motion, he had to establish (1) an intervening change in the controlling law; (2) new evidence not previously available; or, (3) a clear error of applicable law or to prevent manifest injustice. (MRCP 59(e)) *Journey v. Berry*, 953 So. 2d 1145 (Miss. 2007) The Motion that was presented to the Chancellor in this case, has no basis of law or fact.

The Courts of the State of Mississippi have consistently held that a Chancellor's decision as the fact finder, will only be reversed when there is clear abuse of the Judge's discretion (MRCP Rule 59) *Cruz v. Mahaffey*, 986 So. 2d 987 (Miss. 2007) rehearing denied, assert denied 987 So. 2d 451; *CoHo Resources, Inc v. Chapman*, 913 So. 2d 899 (Miss. 2005) The Judge's ruling is clear in this case, that the Defendant's conduct, by clear and convincing evidence, was fraudulent, and relying on his position of trust in that, all his actions should be voided, set aside and held for naught.

***20 CONCLUSION**

In conclusion, based on the compelling testimony that speaks beyond the grave, and the Findings of Fact, determined by clear and convincing evidence, and the failure to rebut the greedy and avarice intentions of the beneficiary of the undue **trust**, the Court was correct based on his Findings of Facts, and applicable Conclusions of Law, and this Court should affirm the final judgment of the Chancellor.

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